HARRY L. BIGBEE

IBLA 70-85 Decided March 1, 1971

Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Operating Agreements

An instrument in which an assignor agrees to "grant, sell, assign and convey the exclusive right and privilege of testing and developing" is an operating agreement rather than an assignment of record title and creates no contractual relationship between the United States and the assignee.

Oil and Gas Leases: Relinquishments

Failure to file a relinquishment in triplicate, as required by regulation, is a remediable deficiency and need not be fatal to the relinquishment's effect.

IBLA 70-85 : NM 0103300

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| HARRY L. BIGBEE | : | Application to reinstate |
| | : | oil and gas lease rejected |
| | : | |
| | : | Affirmed |

DECISION

Harry L. Bigbee has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Bureau of Land Management, dated August 22, 1969, which affirmed a New Mexico land office decision of May 28, 1969. The land office decision rejected Bigbee's application to reinstate lease NM 0103300 for the reason that the lease had been relinquished and the lands included in a new lease.

The information in the record pertinent to this appeal is as follows:

Lease NM 0103300 was issued May 1, 1961, to Wasatch Lease and Exploration Co. for 1,080 acres. Effective June 1, 1961, the lease was assigned to Transmountain Production Co. On July 23, 1962, Transmountain posted a $10,000 lease bond and designated Harry L. Bigbee as operator on a certain 640 acres thereof to a depth of 5,451 feet. An assignment of operating rights from Transmountain to Bigbee was executed on October 11, 1962, filed November 1, 1962, and approved by the land office in its decision of November 9, 1962.

Effective May 1, 1966, the entire lease was assigned by Transmountain to Arwood H. Stowe, who assigned the entire lease to Loyd R. Van Deventer, effective January 1, 1968.

A land office decision of October 29, 1968, accepted a relinquishment of lease NM 0103300 from Van Deventer and canceled the lease effective October 16, 1968, the date of filing of the relinquishment. The lands were posted as available for leasing under the simultaneous filing procedure. Robert E. Boling was the successful drawee and lease NM 8393, for most of the land, was issued effective January 1, 1969. Record title to lease NM 8393 is now vested in Don C. Wiley.

The land office made demand on Van Deventer on April 8, 1969, for $2,160, the minimum royalty due for lease year ending April 30, 1968, and fractional lease year ending October 16, 1968. On April 25, 1969, Bigbee requested reinstatement of the lease and forwarded $3,240 to cover the delinquent royalty and payment for the lease year 1969 to 1970.

Bigbee's contention is that the agreement of October 11, 1962, between himself and Transmountain was an assignment of record title, which the land office recognized in its November 9, 1962, decision; therefore, he had the sole right to exercise any right of relinquishment as to the 640 acres. Bigbee also argues that Van Deventer filed only one copy of his relinquishment, contrary to 43 CFR 3129.1 (redesignated 43 CFR 3108.1, 35 F.R. 9688) which requires that three copies be filed, causing the relinquishment to be ineffective.

The issue to be resolved is whether the assignment from Transmountain to Bigbee constituted a conveyance of the record title to a certain horizon within a 640-acre portion of the lease or merely granted operating rights within that limited area.

To resolve that issue we must first define the terms and distinguish the differences in the two concepts. We must then endeavor to ascertain the intention of all of the parties, including the Bureau of Land Management, and finally we must examine the facts and the law to see whether there was accomplishment of that intention.

An operating agreement is a contract in which the record holder of a lease grants the right to another to drill for oil and gas and produce same upon discovery, under terms and conditions set out in the agreement. Such an agreement differs from an assignment in that an assignment transfers the record title to a lease and the assignee takes the place of the lessee insofar as obligations to comply with the lease terms are concerned, whereas an operator under an operating agreement is merely granted the right to prospect for and produce oil or gas from the leased land under a consideration set out in the agreement. Under an operating agreement, there is usually reserved to the lessee, or others designated by the lessee, an overriding royalty. L. HOFFMAN, OIL AND GAS LEASING ON FEDERAL LANDS (1st Rev. 1957). However, the terms are not mutually exclusive. An operating agreement may involve an assignment of the lease as to a specific part of the land, or of an undivided interest in the entire lease. W. L. SUMMERS, THE LAW OF OIL AND GAS § 558 (2nd Ed. 1958).

Appellant, in an excellent brief, advances cogent arguments to support his contention that he regarded the "Assignment of Operating Rights" as a conveyance of record title to the upper horizon of the designated 640-acre portion of the leasehold, and it will not alter the outcome if we are persuaded that this was in fact his intention.

However, we are equally persuaded that Transmountain did not intend to convey title to that portion of its leasehold. Not only did the agreement itself fail to recite such an intention, but thereafter Transmountain took no action which might tend to evidence recognition of such a conveyance. On the contrary, it subsequently assigned the entire lease to Stowe without exception or reservation, expressly stating in the assignment document that it held an interest of 100 percent and that it was thereby assigning 100 percent to Stowe. Appellant does not allege that this action constituted fraud, misrepresentation, or gross error.

The land office decision of November 9, 1962, which appellant contends recognized his right to record title, reads in part as follows:

ASSIGNMENT OF OPERATING RIGHTS APPROVED

> The following assignment of operating rights involving oil and gas lease NM 0103300 is hereby approved.
>
> The assignment, executed October 11, 1962, filed November 1, 1962, conveys the operating rights in . . . .
>
> The lessee is maintaining a $10,000 bond.
>
> Since only one copy of assignments of operating rights is required, the extras submitted are returned to the assignee. (Emphasis supplied.)

There is nothing in the decision to indicate that the land office held the agreement to be anything other than what it was, an assignment of operating rights, and its approval was obviously intended to signify nothing more. Following its approval of the agreement, the land office took none of the administrative actions which would be taken incident to an assignment of the record title.

The record clearly indicates that the agreement between Transmountain and Bigbee was only an assignment of operating rights, and not of record title.

The instrument of October 11, 1962, which Bigbee contends gave him record title, reads in part as follows:

ASSIGNMENT OF OPERATING RIGHTS

> TRANSMOUNTAIN PRODUCTION COMPANY . . . does hereby grant, sell, assign and convey unto HARRY L. BIGBEE . . . the exclusive right and privilege of testing and developing the Federal lands under the following described lease: . . . . (Emphasis supplied.)

These are not words of assignment of record title creating a separate lease, as were the words employed by the agreements construed in Continental Oil Company et al., 74 I.D. 229 (1967); Richfield Oil Corporation, 65 I.D. 348 (1958); and Ray Sorrell, 59 I.D. 278 (1946).

Appellant contends that the words in the agreement, "In connection therewith ASSIGNEE shall be entitled to exercise all rights and privileges granted to Lessee under the terms of said oil and gas lease as to said depth . . .," grant him the right to convey title.

"All rights and privileges" refers to those of the lessee to test and develop, pursuant to section 1 of the lease terms, not of the lessee's right to convey title to the lease.

Where the holder of an oil and gas prospecting permit issued by the Secretary of the Interior entered into a contract with an oil company, which agreed to develop the property in accordance with the requirements of the United States, and to pay rentals, royalties and other charges payable to the United States, and to divide the oil and gas, the contract was merely an "operating agreement" and not an "assignment" of land, and hence the company's successor in interest did not thereby obtain any right to obtain the lease from the United States. Aronow v. Hill, 286 P. 140, 141; 87 Mont. 153 (1930). Similarly, where an operating agreement on a Federal oil and gas lease provided that the operator should have 75 per cent of the oil and gas produced, but did not transfer to the operator an interest in the lease, the court held that the operator was not entitled to a judgment decreeing him to be the owner of an undivided interest in the lease in the absence of allegations of fraud, misrepresentation, mistake, duress, ambiguity or other matters essential to empower the court to rescind, modify or reform the agreement. Travis v. Midway Oil Corp., et al., 144 F. Supp. 863 (D. Wyo. 1956).

The approval by the Secretary of the Interior of an agreement between the lessee and an operator does not give rise to a contractual relationship between the United States and the operator even though the agreement binds the operator to fulfill the lessee's obligation under the lease. Bert O. Peterson, Midwest Holding Co., Maude L. Brown, 58 I.D. 661 (1944), aff'd Peterson v. Ickes, 151 F.2d 301 (D.C. Cir. 1945), cert. denied, 326 U.S. 795 (1946). See Me-Tex Supply Co., A-29127 (July 19, 1963).

A party to a contract is bound by his express language, and cannot contradict the meaning of his words by denying that he intended this meaning. See RESTATEMENT OF CONTRACTS, § 503 (1932).

We conclude that the operating agreement did not constitute an assignment of any portion of the leasehold; that it did not preclude the subsequent assignments of the lease in its entirety; that Van Deventer had the sole authority to relinquish the lease; and that appellant has no right to seek reinstatement.

In view of these conclusions we need not consider appellant's contention that the relinquishment was ineffective. However, for the sake of the record, we will briefly treat this aspect.

The appellant asserts that Van Deventer only filed one copy of the relinquishment and the land office xeroxed copies of his letter of relinquishment and forwarded these copies to the surety and to the United States Geological Survey along with a copy of its October 29, 1968, decision. While the record shows that copies of the decision and the relinquishment were sent to Van Deventer, the surety, and the United States Geological Survey, there is no evidence that these were xeroxed copies. The land office decision of May 28, 1969, states that Van Deventer's request for relinquishment was in full compliance with the regulations. Therefore, since other copies of the relinquishement are not in the file, we must assume Van Deventer complied with the regulations, or that any defect in his filing was not fatal, as to prevent the issuance of a new lease. Moreover, the regulation is intended to facilitate administrative convenience and the administrator is the only one benefited by compliance with the requirement or adversely affected by non-compliance. If there were insufficient copies and he was able to satisfy the administrative needs by reproducing machine copies, and if he chose to do so, this would serve to remedy the deficiency. In any event the Department has held that failure to file triplicate copies of a relinquishment need not be fatal to its effect. Douglas Stewart, Salt Lake 065684 (Jan. 14, 1958), approved by the Secretary.

Appellant's motion to produce evidence that only one copy of the relinquishment was filed is denied, and the new lease NM 8393 will not be disturbed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Edward W. Stuebing, Member

We concur:

Martin Ritvo, Member

Francis Mayhue, Member.